REMARKS

Rejection under 35 U.S.C. § 112

Claim 4 has been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way as to enable one of skill in the art to make and/or to use the invention. Applicants have cancelled claim 4 making the rejection under 35 U.S.C. § 112, moot.

Rejection under 35 U.S.C. § 102 (a)

Claims 2 and 3 stand rejected under 35 U.S.C. § 102 (a) as anticipated by Bian et al (Carcinogenesis, Vol. 17, No. 12, pages 2559-2562, 1996). 35 U.S.C. § 102 (a) requires that the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the Applicant for the patent. This article was published in December 1996, less than a year prior to the date of application for the present patent in the United States. This publication was co-authored by the inventors of the instant patent. There are two other authors listed on the publication. However, as noted in the accompanying Katz type declaration the other coauthors are not inventors of the claimed invention, but merely worked under the direction and supervision of Dr. Sun. Neither Jacobs nor Wang contributed to the conception or reduction to practice of Applicants' claimed invention. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 2 and 3 under 35 U.S.C. § 102 (a).

Claim 3 stands rejected under 35 U.S.C. § 102 (b) as anticipated by Draper et al. (U.S. Patent No. 5,248,670). As noted by the Examiner, Draper neither teaches nor suggests a sequence that binds to the concensus p53 DNA binding site as do Applicants' claimed sequences. Draper discloses the sequence comparisons of the UL39 gene DNAs of herpes virus-1 (HVS-1), strain 17 and HSV-2, strain 333; and comparisons of the UL40 gene DNAs for HSV-1, Kos strain and HVS-2, strain 333. Draper also compares the homologous ORFs among HSV-1, VSV, and EBV. The DNA sequences disclosed in Draper are all long viral DNA sequences. Even if DNA sequences similar or even identical to the concensus p53 DNA binding sites were disclosed buried within Draper's long viral sequences, there is no evidence or suggestion that the viral

sequences would have the proper conformation or folding pattern to allow binding to the concensus p53 DNA binding sites. Applicants have amended claim 3 to include the limitation that the sequence of claim 3 binds to the concensus p53 DNA binding site.

Conclusion

For the reasons set forth above, Applicants respectfully request that the claims are now in condition for allowance and request early notice to that effect.

Respectfully submitted,

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Rosanne Goodman
Registration No. 32,534
Warner-Lambert Company LLC
2800 Plymouth Road
Ann Arbor, MI 48105
Telephone: (734) 622-4182
Facsimile: (734) 622-2928

Attachment - Yi Sun Declaration Under 37 C.F.R. § 1.132